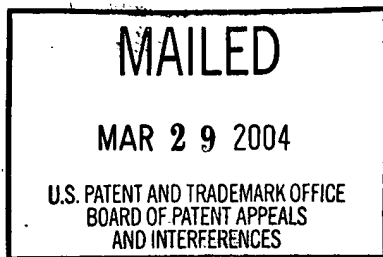


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte JERRY A. JENKS

Appeal No. 2003-2098
Application No. 09/833,978

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claims 1 to 4 and 6 to 11, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates generally to electrical switches and, more particularly, to a general purpose, consumer electrical interrupt switch (specification, p.

1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Freeman	2,706,225	Apr. 12, 1955
Lockard	3,974,347	Aug. 10, 1976
Osika	4,463,228	July 31, 1984

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Freeman.

Claims 2 to 4, 6, 7 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika.

Claims 7 to 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika and Lockard.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 14, mailed April 3, 2003) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 13, filed March 18, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We sustain the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Freeman.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference

anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claimed subject matter

Claim 1 reads as follows:

An electrical interrupt switch for allowing disconnection of electrical plug-connected equipment without removing an electrical plug from a receptacle, said switch comprising:

- a 120 VAC plug at a first end;
- a corresponding receptacle at a second end for allowing connection of an electrical power cord, said receptacle in rigid mechanical contact with said plug;
- and
- a rocker switch that allows a user to interrupt flow of electrical current.

Teachings of Freeman

Freeman's invention relates to an electrical adapter connectable to an electrical outlet for use with a remote control switch. As shown in the drawings, the numeral 10 designates the adapter which is employed with a remote control switch 11 which is connectable to the adapter by the flexible conductors 12 and 13 and a plug 14 whose

prongs 15 and 16 are insertable into the body of the adapter through suitable apertures. The adapter 10 is provided with metallic prongs 17 and 18 for engaging into electrical connection with commonly used electrical outlets and is also provided with contact elements 19 and 20 which engage the prongs (not shown) of a plug of an electrical device.

The adapter includes two outer side body members 21 and 22 and four inner body members 23, 24, 25 and 26 of suitable electric insulating material such as plastic, ceramic or the like. The body members define recesses 27 and 28 in which the contact elements are disposed and which are adapted to receive the prongs (not shown) of a plug of an electrical device. Similar recesses are provided in the body members to receive the prongs 15 and 16 of the plug 14.

The contact element 20 and the prong 18 are formed of a single piece of metal and are joined by a connecting portion 29 integral therewith. The contact element 19 has two parallel extensions 30 and 31 while the prong 17 has two parallel extensions 32 and 33. The extensions 30 and 32 are aligned but their ends are spaced apart to form gap 34. The extensions 31 and 33 are similarly aligned and their ends are spaced to form gap 35. The prongs 15 and 16 of the remote control switch plug 14 engage the extensions 31 and 33 on opposite sides of the gap 35 so that a continuous circuit is

obtained from the prong 17 through the extension 33, the prong 15, the conductors 12 and 13 and switch 11 when in closed position, the prong 16 and the extension 31 to the contact element 19. The circuit between the prong 17 and the contact element 19 can be broken by opening the switch 11. The switch element may be a single pole, single throw switch of any suitable construction which selectively connects or disconnects the conductors 12 and 13.

A circuit may be completed between the prong 17 and the contact element 19 by the toggle member 36 which includes two arms 37 and 38 joined by an integral connecting member 39. The toggle member 36 is movable to an open position wherein the arm 37 is disposed in alignment with the gap 34 between the extensions 31 and 32 and also to a closed position (Figure 3) wherein the arms 37 and 38 contact the extensions 30 and 33, respectively, and so complete the circuit between the prong 17 and the contact element 19.

The toggle member 36 is mounted on a bracket 39 for movement about a pivot 40. A finger operable member 41 is also mounted on the bracket 39 for movement about a pivot 42. The finger operable member has a spur 43 and a spring 44 is mounted on and between the spur 43 and the spur 45 of the connecting member 39 of

the toggle member 36. When the finger operable member 41 is pivoted clockwise (Figure 2), the spring 44 will be compressed and will exert a force which will cause the toggle member to pivot suddenly in a counterclockwise direction, or snap, to the open position when the member 41 has been pivoted a predetermined distance in the clockwise direction. Similarly, when the toggle member will be moved clockwise, from the open position to the closed position when the finger operable member 41 is pivoted counterclockwise.

Freeman teaches (column 2, line 42, to column 3, line 18) that:

In use, the prongs 17 and 18 of the adapter are inserted into an electrical outlet and are thereby connected to an electrical circuit. The prongs 15 and 16 of the plug are inserted into the adapter 10 and contact the extensions 33 and 31, respectively, so that the switch may either close or open an electrical circuit between contact element 10 [sic, 19] and the prong 17. The prongs of the plug (not shown) of an electrical device 46 are inserted into the apertures or recesses 27 and 28 of the adapter and contact the elements 19 and 20.

It [sic, If] it is now desired to control the operation of the electrical device by use of the switch 11, the finger operable member 41 is moved clockwise to cause the toggle member 36 to snap to open position where it does not connect the extension 33 to extension 30. If the switch 11 is now closed, current will flow from the prong 17 through the extension 33, conductor 12, switch 11, conductor 13, and the extension 31 to the contact element 10, and from the contact element 19 the current will flow to the electrical device 46 and from the electrical device, to the contact element 20 and there through the connecting portion 29 to the prong 18. If the switch 11 is now opened, the circuit to the electrical device 46 will be broken and it will be rendered inoperative.

When, for one reason or another, it becomes undesirable to control operation of the electrical device by use of the remote control switch 11, the finger operable member 41 is moved counterclockwise to move the toggle

member 36 to closed position. The toggle member 36 now connects the prong 17 to the contact element 10 [sic, 19] so that the electrical device is connected in series between the prongs 17 and 18 and is energized. The remote control switch is, therefore, rendered inoperative as regards the control of the operation of the electrical device. The plug 14 may be removed from the adapter so that the operation of the electrical device will depend solely on the position of the toggle member 36. It will be evident, of course, that if the plug 14 is left inserted in the adapter and the switch 11 is in closed position, the electrical device will remain energized even if the toggle member 36 is moved to open position. The toggle member 36 performs the functions of a switch and may be regarded as such.

It will now be seen that an adapter 10 has been provided which has a pair of prongs 17 and 18 which are insertable in an electrical outlet and which has a pair of contact elements engageable with the prongs of a plug of an electrical device. It will also be seen that one prong 18 is directly connected to one contact element 20 but that the other prong 17 may be connected to the other contact element 19 either through a toggle or switch member 36 of the adapter or through a remote control switch 11. Moreover, it will be seen that the toggle or switch member 36 of the adapter renders the remote control switch inoperative and also that the member 36 may function independently to control operation of the electrical device if the plug 13 [sic, 14] is removed from the adapter.

The appellant's argument

The appellant argues (brief, pp. 6-7) that Freeman fails to disclose every element set forth in claim 1. Specifically, the appellants point out that "Freeman has a pair of male plugs, but lacks the 120 VAC ground plug mechanism."

The examiner's response to the appellant's argument

The examiner's response (answer, p. 4) to the above-noted argument is that "claim 1 does not require a ground plug mechanism."

Our decision

We agree with the examiner that claim 1 does not require a ground plug mechanism. Accordingly, we find the appellant's argument not commensurate in scope to the claimed subject matter. Moreover, claim 1 is readable on Freeman as follows: An electrical interrupt switch (Freeman's adapter 10) for allowing disconnection of electrical plug-connected equipment (Freeman's electrical device 46) without removing an electrical plug from a receptacle, said switch comprising: a 120 VAC plug at a first end (Freeman's prongs 17 and 18); a corresponding receptacle (Freeman's recesses 27 and 28 and contact elements 19 and 20) at a second end for allowing connection of an electrical power cord, said receptacle in rigid mechanical contact with said plug (Freeman's recesses 27 and 28 and contact elements 19 and 20 are in rigid mechanical contact with prongs 17 and 18); and a rocker switch that allows a user to interrupt flow of electrical current (Freeman's finger operable member 41 together with toggle member 36 allows a user to interrupt flow of electrical current).

Since all the limitations of claim 1 are disclosed in Freeman for the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed.

The obviousness rejection based on Freeman and Osika

We sustain the rejection of claims 2 to 4, 6, 7 and 9 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Claim 2 reads as follows:

An electrical interrupt switch comprising:
a housing having a first end opposite a second end and a top surface;
a pair of male blade connectors extending outward from said first end;
a ground prong extending outward from said first end;
female receptacle connectors penetrating said second end opposite said male blade connectors;
a ground receptacle in electrical communication with said ground prong;
and
switch means accessible through said top surface for allowing a user to open or close an electrical circuit between said male blade connectors and said female receptacle connectors, respectively.

Osika discloses a portable electrical circuit control unit. The portable electrical circuit control unit including an electrical receptacle or outlet for receiving the plug on a conductor from a motor and also including an extension cord for connection to a source of electricity. The portable electrical circuit control unit further includes a switch means including a bridging contact means in continuous electrical connection with the receptacle or outlet and selectively operable to electrically connect with the extension cord and complete a circuit to the receptacle or outlet.

Osika teaches that the circuit through the switch in "On" position to the outlet in the unit is made through a plug 24 (shown in Figure 1) connected into a live outlet, and the extension cord 26 comprising three wires 27, 28 and 29, the first two connected to stationary contacts 31 and 32 (shown in Figures 2 and 2a), and the third wire 29 connected to a ground terminal 33 (shown in Figure 2). The switch includes bridging contact members 48 (shown in their two positions in Figures 2 and 5) with one end portion 52 of each in physical and electrical engagement with the respective two stationary contacts 53 and 54 which in turn are either integral with or in electrical connection respectively with U-shaped receptacle tabs or contacts 56 and 57 (see Figures 2 and 8) for the electrical outlet in the unit. As shown in Figures 1, 2 and 8, insertion blades 81 and 82 of a plug 79 are inserted into the stationary receptacle contacts 56 and 57 in the outlet and ground contact 78 of plug 79 is inserted into the

connection 33. When the switch is in the "On" position of Figure 5 the end portion 61 of each bridging contact member 48 engages respective stationary contacts 31 and 32 and the end portion 52 of each bridging contact member 48 engages respective stationary contacts 53 and 54. The "OFF" position of the switch is shown in Figure 2.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Freeman and claim 2, it is our opinion that the only differences are (1) a ground prong extending outward from the first end of the housing and (2) a ground receptacle in electrical communication with the ground prong.

In applying the above-noted test for obviousness, we reach the conclusion that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Freeman's adapter by providing both a ground prong extending outward from the first end of the adapter (i.e., the end of the adapter from which the prongs 17 and 18 extend) and a ground receptacle in the second end of the adapter (i.e., the end of the adapter with recesses 27 and 28) in electrical

communication with the ground prong in view of Osika's teaching of the use of a ground receptacle in electrical communication with a ground prong. In that regard, it must be borne in mind that where two known alternatives are interchangeable for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious. See In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982); In re Siebentritt, 372 F.2d 566, 568, 152 USPQ 618, 619 (CCPA 1967). In this case, the applied prior art establishes that both two prong plugs and receptacles and three prong plugs and receptacles were known alternatives. Lastly, one skilled in this art would readily appreciate that the addition of a ground prong and a ground receptacle to Freeman's adapter improves both the safety of the adapter and the adaptability of the adapter (the ability to accept both two prong plugs and three prong plugs).

Thus, we find ourselves in disagreement with the appellant's argument (brief, p. 7) that the subject matter of claim 2 is not suggested by the teachings of Freeman and Osika. The appellant has pointed out the deficiency of each reference on an individual basis. However, it is well settled that nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). In this case, the appellant has not cogently

explained why the combined teachings of Freeman and Osika would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modify Freeman's adapter to arrive at the subject matter of claim 2.

For the reasons set forth above, the decision of the examiner to reject claim 2 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika is affirmed.

The appellant has grouped claims 2 to 4, 6, 7 and 9 as standing or falling together.¹ Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 3, 4, 6, 7 and 9 fall with claim 2. Thus, it follows that the decision of the examiner to reject claims 3, 4, 6, 7 and 9 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika is also affirmed.

The obviousness rejection based on Freeman, Osika and Lockard

We sustain the rejection of claims 7 to 9 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika and Lockard but not the rejection of claims 10 and 11.

¹ See page 5 of the appellant's brief.

Lockard's invention relates to a technique for incorporating a diode into an electrical circuit, preferably in a manually actuated switch portion of the circuit. Lockard discloses a manually actuated switch having a pair of terminals forming switch poles and a knob which is manually actuated to complete or interrupt an electrical circuit across the poles. A pair of spaced contacts are embedded in the knob and resiliently grip therebetween a diode which controls current direction of the completed circuit.

As shown in Figures 2-4 of Lockard, the switch includes a pair of spaced contacts 8 and 10 (identified in Figure 1). The contact 8 is generally C-shaped and includes a bottom portion 19 having a pair of depending integral projecting arcuate portions 20 and 22. The contact 10 is generally of reversed F configuration having a bottom portion 25 and a depending integral projecting arcuate portion 24. The upper portion 23 of the contact 10 is generally of reversed C-shaped configuration and includes an integral projecting cantilever beam 26 which is relatively thin to permit resilient flexing thereof. The end of the beam portion 26 includes an arcuate depending portion 28 which is opposed and relatively closely spaced from the bottom portion 19 of the contact 8. A dielectric knob generally indicated at 30 is secured to the top portions 17 and 23 of the contacts 8 and 10, leaving the bottom portions 19 and 25 and the beam 26 exposed. The knob 30 is provided with a central projecting axle 32 which projects out of opposite sides of the knob 30. A leadless diode generally indicated at

34 is press fitted between the contact portions 28 and 19. The diode will control current direction of an electrical circuit completed across the diode and through the contact portions 26 and 19.

Lockard's switch includes a base 38 having a plurality of spaced partitions 40 projecting therefrom. The top of the partitions 42 may be provided with a central recess 44. The axle 32 of knob 30 will bridge across and be supported by two of these partitions 40. The base 38 has mounted thereon opposed pairs of contacts 46 and 48 which have corresponding end portions 46' and 48' projecting diagonally toward each other in suspended cantilever portion over the base 38. Contact 46a includes an arcuately bent end portion 62. Opposite end portions 46b and 48b of the terminals 46 and 48 project outwardly of the base 38 in depending relationship therefrom for pluggable connection within apertures 50 of a printed circuit board 52 having circuit paths 54 and 56 thereon.

Lockard's switch also includes a housing 64 having a generally inverted recess 66 latchably secured to the side portions 68 of the base 38 retaining the terminals 46 and 48 in position between the base and the cover 64. The cover 64 has a top wall 70 with a slot 72 therein through which knob 30 projects. With the knob 30 of the switch in its position shown in Figure 3, the contact portion 22 of contact 19 will engage and

compress the terminal 46a and will be detented in the arcuate portion 62. The contact 46a will be resiliently deflected in cantilever fashion by its engagement with the contact 19 to assure good electrical connection therewith. The contact portion 24 of contact 25 will engage and compress the terminal 48a, resiliently deflecting the terminal in cantilever fashion to establish good electrical contact therewith. Accordingly a circuit path will be completed from the circuit path 54 to terminal 46, through contact 19, across the diode 34, through contact portion 26, through terminal 48a and through circuit path 56; with the diode 34 controlling the current direction of said circuit path in the well known operation of a diode. Figure 4 illustrates an alternative position of the knob 30 which is obtained by pivoting the knob about its axle 32. In this position the contact portion 24 of the contact 25 will be disengaged from the terminal portion 48a of the terminal 48 thereby interrupting the circuit path heretofore described. In this position the knob, the contact portion 22a will be disengaged from the terminal portion 46a and the contact portion 22b of the contact 19 will be pivoted to engage and detent in the arcuate portion 62. Accordingly the knob 30 may be detented in either of two positions either interrupting or completing a circuit path as described with the diode 34 controlling the direction of current flow or serving to isolate the voltages of undesired polarities from a circuit path which is established across the terminals 46 and 48.

In the rejection of dependent claims 7 to 11 under 35 U.S.C. § 103 (answer, p. 3), the examiner, in essence, concluded that it would have been further obvious at the time the invention was made to a person of ordinary skill in the art to have modified Freeman's rocker switch that allows a user to open or close an electrical circuit between the male blade connectors and the female receptacle connectors (i.e., finger operable member 41 together with toggle member 36) to operate as taught by Lockard's rocker switch.

We find ourselves in basic agreement with the examiner that it would have been further obvious to have modified Freeman's rocker switch as taught by Lockard's rocker switch. The appellant's argument (brief, pp. 8-9) does not explain why it would not have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Freeman's rocker switch as taught by Lockard's rocker switch.

The limitations of claim 7² are clearly met by both Freeman's rocker switch and Lockard's rocker switch and the appellant has not alleged otherwise.

² Claim 7 reads as follows:

The electrical interrupt switch of Claim 2, wherein said switch means comprises a rocker switch, and wherein said housing pivotally supports said rocker switch about a pivoting axle, thereby providing said rocker switch with angular movement for opening or closing said electrical circuit between conductive contacts.

The appellant argues that the limitation of claim 8 that the rocker switch includes a pair of flat and intersecting surfaces about an upper portion of the rocker switch is not met by Lockard's knob is unpersuasive since as clearly shown in Figures 3 and 4 of Lockard, knob 30 has a pair of flat and intersecting surfaces about an upper portion of the knob.

The appellant argues that the limitation of claim 9 that a lower portion of the rocker switch comprises a cam-shaped arcuate body is not met by Lockard is unpersuasive since as clearly shown in Figures 3 and 4 of Lockard, the lower portion of the rocker switch include contact portions 22a, 22b and 24 which are cam-shaped arcuate bodies.

Claim 10 read as follows:

The electrical interrupt switch of Claim 9, wherein said conductive contacts comprise:

- a first electrically conductive contact supported along a first side of said body;

- a second electrically conductive contact having a first end opposite a second end, said first end in electrical communication with [one of] said receptacle connectors and said second end projects downward from a horizontal portion of said second electrically conductive contact and away from said cam-shaped arcuate body such that as said rocker switch is articulated, said first electrical conductive contact engages said blade connectors at one end and engages said second electrical conductive contact at an opposite end;

- a third electrically conductive contact having a first end opposite a second end, said first end in electrical communication with [another] one of said receptacle connectors and said second end projects downward from a horizontal

portion of said third electrically conductive contact and away from said cam-shaped arcuate body such that as said rocker switch is articulated, said first electrical conductive contact engages said blade connectors at one end and engages said third electrical conductive contact at an opposite end;

articulation of said rocker switch causes electrical communication between said blade connectors, said first electrical conductive contact, said second electrical conductive contact and said third electrical conductive contact, thereby creating electrical continuity between said receptacle connector[s], through said second electrical conductive contact and said third electrical conductive contact, to said first electrical conductive contact and to said blade connector[s].^[3]

The appellant argues that the claimed first electrically conductive contact, second electrically conductive contact and third electrically conductive contact as recited in claim 10 and claim 11 dependent thereon are not suggested by Lockard's rocker switch. We agree. In the rejection of claim 10, the examiner has never explained how the limitations of claim 10 are met. Furthermore, it is clear from the teachings of Freeman that the rocker switch as modified by Lockard would still only connect/disconnect prong 17 to contact element 19. That is, Freeman's prong 18 would always be connected to contact element 20 by connecting portion 29. Accordingly, there is no teaching in the applied prior art of having both the second electrically conductive contact and the third electrically conductive contact as set forth in claim 10.

³ The appellant is encouraged to amend claim 10 to include the material indicated by us in brackets since we believe that these changes help to improve the readability of the claim.

We do not agree with the examiner's comment (answer, pp. 5-6) that the claimed arrangement "will short out the circuit." In our view, a person of ordinary skill in the art would understand that the claimed first electrically conductive contact⁴ contains two electrically isolated contact surfaces thus preventing any shorting out of the circuit.

For the reasons set forth above, the decision of the examiner to reject claims 7 to 9 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika and Lockard is affirmed and the decision of the examiner to reject claims 10 and 11 under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Osika and Lockard is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed; the decision of the examiner to reject claims 2 to 4 and 6 to 9 under 35 U.S.C. § 103 is affirmed; and the decision of the examiner to reject claims 10 and 11 under 35 U.S.C. § 103 is reversed.

⁴ Contact 46 shown in the appellant's Figure 3.

AFFIRMED-IN-PART

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